



POLICE DEPARTMENT

OCTOBER 07, 2009

MEMORANDUM FOR: Police Commissioner

Re: Sergeant William Soviero
Tax Registry No. 913897
Bronx Gang Squad
Disciplinary Case No. 83259/07

The above-named member of the Department appeared before the Court on July 8, 2009, charged with the following:

1. Said Sergeant William Soviero, while assigned to the Bronx Gang Squad, on or about August 23, 2006, while on duty, at a location within the confines of the 46th Precinct known to the Department, in Bronx County, did fail and neglect to supervise other members of the service under his supervision, in that, having overseen an arrest of an individual known to the Department and the field testing of purported contraband possessed by said individual which produced negative results, did fail to ensure that a Property Clerk Invoice and a Narcotics Field Test Report were prepared, as required.

P.G. 202-17, Page 1, Paragraph 1 – DUTIES AND RESPONSIBILITIES PATROL
SUPERVISOR

O.C.C.B. Narcotics Division Manual Procedure 30-55, Page 3-4 – FIELD TESTING
NARCOTICS

2. Said Sergeant William Soviero, while assigned to the Bronx Gang Squad, on or about August 23, 2006, while on duty, at a location within the confines of the 46th Precinct known to the Department, in Bronx County, did fail and neglect to supervise other members of the service under his supervision, in that, having overseen the voiding of an arrest and the release of a prisoner arrested within the confines of the 46th Precinct, did fail to ensure that the 46th Precinct Desk Officer was informed of the circumstances of the release, and that a 46th Precinct Command Log entry was made regarding the release, as required.

P.G. 202-17, Page 1, Paragraph 1 – DUTIES AND RESPONSIBILITIES PATROL
SUPERVISOR

P.G. 210-13, Page 1, Note – PRISONERS RELEASE OF PRISONERS

The Department was represented by David Green, Esq., Department Advocate's Office, and the Respondent was represented by Philip Mellea, Esq.

The Respondent, through his counsel, entered a plea of Guilty to the subject charges. A stenographic transcript of the record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent, having pleaded Guilty, is found Guilty.

SUMMARY OF EVIDENCE IN MITIGATION

The Respondent has been a member of the Department for approximately eighteen years and has been a sergeant for about nine years. He has been assigned to the Bronx Gang Squad for about six years.

On August 23, 2006, the Respondent testified that his unit, which primarily focused on narcotics violations, was operating within the confines of the 46 Precinct. He was trained in the field testing of substances alleged to be marijuana, but for no other substances.

The Respondent testified that he received a call from Detective Dunsing and Police Officer McCormack, stating that they had an arrest. Because "the arrest was made right by" the 46 Precinct station house, and the Respondent was a few blocks away from the station house, he told the officers he would meet them there. The Respondent "pulled up to the 46 Precinct right in front and they were already there." Dunsing and McCormack had a male, later identified as [REDACTED], in handcuffs. They were about seven or eight car lengths from the entrance to the 46 Precinct station house, across the street.

The Respondent observed that [REDACTED] was dressed completely in white, including his shoes, hat, shirt and pants. "[R]ight off the bat my feeling was" that [REDACTED] was a practitioner of Santería. The Respondent believed this because "in my years of experience I dealt with" people who practice Santería "quite a bit. . . . So I had an idea of where it was going as soon as I arrived."

The Respondent testified that the officers showed him "this pouch with some sort of powdery leafy substance." [REDACTED] "was saying it's not drugs, it's not drugs I practice Santeria it's for my religion." The Respondent recognized the item and "right off the bat I knew the pouch, I have seen it before and I realized that it was not a controlled substance." The substance was mostly white but had green specks. It was "[n]ot something that obviously looked like marijuana or heroin[] or cocaine." The pouch was like a cloth bean bag. It was not a clear material or glassine envelope. The Respondent asserted that every Santería practitioner that he had stopped had this pouch. Some would show it to him and explain that it was a religious item. "It was blessed or whatever like that." A quantity of cash had also been recovered from [REDACTED].

The Respondent testified that a field test was performed, and it came back negative. The Respondent instructed the officers to uncuff [REDACTED]. [REDACTED] was very upset, and "just kept saying . . . please don't take it, it's part of my religion, it's very important to me." [REDACTED] was "almost crying begging us not to take it." The Respondent handed the substance back to [REDACTED]. He felt that "it was sentimental value" to [REDACTED]. The Respondent also believed that as there was no probable cause regarding the substance, "how can I then take it from him knowing that it's not an illegal substance so at which time I gave it back to him."

The Respondent stated that [REDACTED] was released. He was not brought into the station house.

The Respondent testified that he approached the desk officer, who was doing other paperwork. The desk officer told the Respondent to "give me a little bit of time," and as the day went on, "it had slipped my mind to go back to do it."

The Respondent stated that the arrest-voiding procedure was done the next day because there was a problem with the computers or the computer codes. He notified Lieutenant Loughran, and the next day "when the computers were up and running" the voiding of the arrest was entered into the on-line booking system.

The Respondent agreed that if he were to have vouchered the substance, a field test report "should have been prepared absolutely." Because he did not voucher it, and instead returned it to [REDACTED] he did not prepare a field test report. The Respondent added that because of "this specific nature of his religion and of this particular powder how important it was to" [REDACTED] he decided to return the substance. The Respondent conceded that he should have vouchered the substance and should have sent it to the lab, notwithstanding the negative test. The reason he did not do so was "the fact of the circumstance and the religious nature of the item." He agreed that a field test report was also necessary. The Respondent agreed that even if the items, including both the powder and cash, were to be returned to the subject without forwarding to the lab, a voucher should have been filled out.

On cross-examination, the Respondent admitted that he told Dunsing and McCormack to meet him at the station house because it was closer to the Respondent's location.

The Respondent stated that he had made many arrests involving heroin. He described heroin as an off-white substance somewhere "between powder and granular." It was usually darker than cocaine in its powder form. The Respondent admitted that either Dunsing or

McCormack, or both, had believed the substance was heroin. Either one or both of them were trained in the field testing of heroin and cocaine.

The Respondent conceded he had no way of knowing whether [REDACTED] was a drug user by his appearance. The Respondent admitted that he did not know what the substance actually was.

The Respondent agreed that because he did not go back to the desk officer after "the day got away from me," no command log entry was made that day regarding [REDACTED]'s voided arrest.

The Respondent did not recall [REDACTED] making any threats against him or the other officers "regarding things he would do if he was not released." [REDACTED] was upset and angry, not only about the pouch being taken from him, but being handcuffed and brought to the station house. [REDACTED] was yelling, but the Respondent could not recall what he was saying.

On re-direct examination, the Respondent testified that filling out the voucher would have taken 45 minutes to an hour. He asserted that they could have released [REDACTED], vouchered the evidence and then could have sent it to the lab. The Respondent doubted [REDACTED] would have gotten his currency unless he was brought back to the station house and a voucher was filled out. This would have required [REDACTED] to be detained there for an hour "in my opinion for no reason."

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974). The Respondent was appointed to the Department on April 30, 1991. Information from his personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent has been found Guilty, after pleading Guilty and testifying in mitigation of the penalty, of several failures resulting from a negative field test result of a powdery substance. The Respondent testified that based upon his prior experience, and the arrestee's clothing and statements, he believed the substance was an amulet used in Santería religious practice. A quantity of cash was also recovered from the arrestee. The Respondent, who was supervising the officers that had stopped the arrestee, failed to ensure that a field test report and a property clerk voucher were filled out. He also failed to ensure that the desk officer was informed of what had occurred and that a command log entry was made. The Court recommends that the Respondent forfeit 10 vacation days as a penalty. See Disciplinary Case No. 83233/07, signed Nov. 25, 2008 (23-year lieutenant with one prior disciplinary adjudication pleaded Guilty and forfeited 8 vacation days for neglecting to make command log entries as desk officer documenting the reassignment of an arrest, failing to make appropriate entries in Activity Log of the reassigned officer, and failing to make sure vehicle was properly vouchered); Disciplinary Case No. 80613/05, signed June 27, 2005 (8-year member with no record pleaded Guilty and forfeited 8 vacation days for failing to properly supervise property located at crime scene; while member was assigned to supervise the scene, tow truck drivers removed personal property before it could be invoiced).

APPROVED
NOV 18 2009
Raymond W. Kelly
RAYMOND W. KELLY
POLICE COMMISSIONER

Respectfully submitted,

David S. Weisel
David S. Weisel
Assistant Deputy Commissioner – Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
SERGEANT WILLIAM SOVIERO
TAX REGISTRY NO. 913897
DISCIPLINARY CASE NO. 83259/07

On the last three performance evaluations contained in his file, the Respondent received ratings of 4.0, 4.5 and 4.5 in 2005, 2006 and 2007, respectively.

The Respondent was appointed to the Housing Police Department in 1991. [REDACTED]

[REDACTED]. The Respondent has no prior formal disciplinary history.

For your consideration.



David S. Weisel
Assistant Deputy Commissioner – Trials